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To:

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Subject: RE: Statute FTC Carryback

I've reviewed your question regarding the period of limitations on assessment. The facts as I understand them are as follows:

Year 5 - taxpayer has an NOL, which it carried back to Year 3.

Year 3 - taxpayer had foreign tax credits, which it carried back to Year 1.

The NOL carryback adjustments in Year 3 reduce the amount of FTC that can be carried back to Year 1, creating a deficiency for Year 1.

The period of limitations on assessment for Year 5 has been extended under section 6501(c)(4), however, the period of limitations under section 6501(a) for Years 1 & 3 has expired. Your question is whether the Service can still validly assess the Year 1 deficiency.

Answer: Yes, this principal is well established. Under section 6501(h), "in the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback...such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss...which results in such carrback may be assessed." Since Year 5, the loss year, is clearly extended by agreement, the question is whether the Year 1 deficiency is "attributable to" the NOL carryback. In First Chicago Corp. v. Commissioner, 742 F.2d 1102 (7th Cir. 1984), the Seventh Circuit, reversing the Tax Court's majority decision and adopting the dissenting opinion as its own, generally states that a deficiency is attributable to a carryback if it can be traced to the carryback even if the carryback adjustment triggers a different tax mechanism. In First Chicago, the carryback adjustment from 1974 to 1971 resulted in an income adjustment in 1971 which in turn reduced a carryover to 1972. The Court stated that the resulting 1972 deficiency was attributable to the carryback from 1974 to 1971. Here, similiarly, the NOL carryback from year 5 to year 3 triggers the adjustment of allowable foreign tax credits, reducing the amount available to be carried back to Year 1.

Hopefully this answers your question. Please contact me with any further questions or comments.

Thank you